

**COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES  
AND SUBSTANCE ABUSE SERVICES**

**Draft Rules Committee Minutes**

**Holiday Inn-North  
2805 Highwoods Blvd., Raleigh, N.C. 27604**

**Wednesday, January 17, 2007**

**Attending:**

**Commission for MH/DD/SAS Members:** Floyd McCullouch, Anna Scheyett, Pender McElroy, Clayton Cone, Dorothy Crawford, Pearl Finch, Ellen Holliman, Mazie Fleetwood, Buren Harrelson, Emily Moore, Jerry Ratley, Ellen Russell, Fredica Stell, George Jones, Connie Mele, Lois T. Batten, Richard Brunstetter, Martha Martinet

**Ex-officio Members:** Sally Cameron, Yvonne Copeland, Joe Donovan, Bob Hedrick, Larry Pittman

**Excused:** Tom Ryba, William Sims, Ann Forbes

**Division Staff:** Mike Moseley, Leza Wainwright, Steven Hairston, Cindy Kornegay, Marta Hester, Susan Robinson, Dick Oliver, Jim Jarrard, Spencer Clark, Laura White, Mabel McGlothlen, Flo Stein, Andrea Borden

**Others:** John Crawford, Tara Fields, Karen Salacki, Ann Rodriguez, Stephanie Alexander, Dave Peterson, Miranda Brock, Jennifer Sullivan Munford, Deanna Janus, Frank Edward

**Handouts:**

**Mailed Packet:**

1. January 17, 2007 Rules Committee Agenda
2. October 19, 2006 Draft Rules Committee Meeting Minutes
3. 10A NCAC 26C .0600 Proposed Adoption - Removal of LME Functions
4. 10A NCAC 27G .0212 Proposed Adoption - Disclosure of Financial Interest
5. 10A NCAC 27I .0102 and .0201 Proposed Adoption - LME Accreditation
6. 10A NCAC 27G. 0211 Proposed Adoption – Provider Accreditation
7. 10A NCAC 27G .0700 Proposed Repeal – Accreditation of Area Programs and Services
8. 10A NCAC 27I .0300 Proposed Adoption – Uniform Portal
9. 10A NCAC 28I .0401 Proposed Repeal – Firearms – State Facilities
10. 10A NCAC 28I .0402 Proposed Adoption – Firearms – State Facilities
11. 10A NCAC 27G .1500 Proposed Repeal – Intensive Residential Treatment
12. 10A NCAC 26C .0700 Proposed Adoption – Requirements for Endorsement of Providers of MH/DD/SA Services
13. Statute and Rule Reference Material

**Additional Handouts:**

1. North Carolina Council of Community Programs – Council Position of Proposed Rules, January 17, 2007

### **Call to Order:**

Chairman Floyd McCullouch called the meeting to order at 9:30 AM. He introduced and welcomed the newest ex-officio member of the Rules Committee, Larry Pittman. Mr. Pittman represents the Addiction Professionals of North Carolina.

Mr. McCullouch asked the Rules Committee members, ex-officio members, Division staff and visitors to observe a moment of silence for people with disabilities and the military deployed abroad including those killed in action.

### **Approval of Minutes:**

Mr. McCulloch asked for discussion concerning the draft October 19, 2006 Rules Committee minutes. Martha Martinet asked that the minutes be amended to denote her as excused.

*Upon motion, second, and unanimous vote, the Committee approved the minutes of the October 19, 2006 Committee meeting with the recommended change.*

### **Commission Chairman's Remarks:**

Commission Chairman, Pender McElroy reminded Commission members to complete and mail in the disclosure forms from the Ethics Commission that are due March 15, 2007.

Mr. McElroy noted the amount of information in the media concerning the mental health, developmental disabilities and substance abuse system and reform. He stated that he thinks Commission members need to have a balanced perspective and would benefit from knowing what the Division's position and thinking is on various issues reported by the media. He asked Mike Moseley and Leza Wainwright about Commission members receiving communication periodically in between meetings on issues occurring and the Division's perspective on them.

Mr. McElroy stated the Commission often takes criticism and that he had recently read that the Division makes the rules and brings them to the Commission for approval. He said he had been battling that perception vigorously for the past 12 years and would continue to do so during the remainder of his tenure on the Commission. Mr. McElroy also stated that there may have been validity to the statement at some point but that in his opinion that had not been the case in a very long time. He gave the example of the upcoming strategic planning session concerning rulemaking that the Commission is undertaking in February as one of the ways to combat that perception.

Mike Moseley, Director DMH/DD/SAS provided a preliminary response and noted one of the ways the Division has worked to communicate with the Commission is through his and Leza Wainwright's regular attendance at Commission meetings to share updates on matters of joint interest. He stated the issue of communicating in between meetings becomes somewhat trickier and said his preference is to have face to face communication rather than sending out a lot written communication. Mr. Moseley said he was open to other ideas and requested that Commission members share their suggestions. He also requested that Commission members call the Division if there are specific issues pertaining to individual communities.

### **Division Update:**

Mike Moseley said he had two or three items to share and would be happy to respond to questions from Commission members. He stated the legislative session is getting ready to convene and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services (LOC) has been meeting regularly to prepare its legislative agenda for the session. At the LOC meeting held yesterday (January 16, 2007), they began sharing their

preliminary report. At this point there are 17 proposals being considered. Many of the proposals have monetary implications. The LOC announced they would continue to meet after the legislative session begins. Many of the recent discussions have been around the consultants' reports, principally the Gaps Analysis for the Long Range Plan final report. Discussion topics have included the methodology, implications and feasibility of implementing the report's recommendations. Mr. Moseley stated it is likely that there will be legislation introduced that would include additional rulemaking.

Leza Wainwright, Deputy Director, DMH/DD/SAS, stated that additional new rulemaking can make it more difficult from a workload standpoint to be able to look at existing rules that need to be amended to reflect reform. She suggested this may be something Commission members want to spend thinking about how to accomplish at the strategic planning session in February.

Mike Moseley provided an update on the legislative Subcommittee on Mentally Ill Residents in Adult Care Homes at the request of Anna Scheyett. He stated one of the proposals discussed in the January 16, 2007 LOC meeting was a recommendation from the subcommittee for a new licensure category. This was a recommendation from the Secretary of DHHS that the subcommittee adopted. DHHS plans to develop a service definition and seek approval from the Centers for Medicare and Medicaid Services (CMS) to have it funded as a Medicaid service. If that is not successful it becomes a matter of what level of support may be expected from the legislature from state funds. He stated this is only one aspect of the proposal. There are other recommendations such as developing a uniform screening tool similar to the one that is used in nursing facilities.

Joe Donovan expressed his concern regarding the development of this new licensure category and how it would be monitored and whether or not advocates may be involved similar to the system used in state facilities.

Mr. Moseley provided additional information concerning the Long Range Plan report. The legislative mandate was to identify service gaps in the system, to identify where services are needed in the community based on an evidence-based practices service delivery system and to provide an estimate of the cost over a five year period of time. According to Mr. Moseley, the Division chose to have the consultant develop a cost model that would be a better predictor of future need instead of using a subjective basis for requesting a particular funding amount to serve a specified number of new people. The policy assumptions used drive the cost predicted by the model. The policy assumptions can be altered and the projected cost of meeting future needs will change.

Pender McElroy asked if the 17 proposed recommendations being discussed by the LOC specifically address the consultant's report on the gaps analysis. Mr. Moseley responded that the LOC has decided not to pursue the \$2.7 billion cited in the report but instead is trying to determine a cost they consider more likely to be supported by a majority in the legislature.

Mr. McElroy asked Mr. Moseley what has led the system to be where it is today with respect to the continued over reliance on state institutions and lack of community services. He asked what has led to the failures. He stated he is having a hard time understanding how we got where we are. What is needed to address the serious issues that exist? What is needed to move forward in providing services that individuals need?

Mr. Moseley stated he does not label what has happened as failures of the system. In looking back to the beginning of the reform legislation that was enacted in 2001, Mr. Moseley stated there was an underestimation of the complexity of the task. Moving the system toward evidence-based

practices, a key component of the reform effort has been difficult. The delays in getting the new service definitions developed and approved did not help. He gave an example of earlier state plans projecting timeframes for approval of service definitions, divestiture and merger activity. He noted that in some cases those activities occurred out of sequence which created problems.

Leza Wainwright noted that some of what some people term as failure can be seen in some regards as a success of what has been achieved and what has been brought to light. For example, with the exception of substance abuse, we have increased access to the system. Overall we are getting more people into the system. That creates a problem if we are now trying to serve two consumers instead of one with the same amount of state funded dollars. She also noted the rise of the consumer movement as a positive outcome. Consumers are no longer willing to passively accept what is offered. Consumers are now willing to state what kinds of assistance they need, want and deserve. As a result we hear more about complaints than we have in the past. Ms. Wainwright pointed out that funding has not kept track of inflation or been adjusted for population growth. Also, she stated there was a significant underestimation of the effect of divestiture, merger and change of service array occurring all at the same time. Ms. Wainwright stated she thinks the majority of the governance issues have been resolved, we are moving forward and progress is being made.

Mike Moseley stated another factor had been the activities of the federal government. Medicaid funds a significant portion of North Carolina's service system. Nationally, states including North Carolina are struggling to move to an evidence-based service system and to implement recommendations from the President's New Freedom Commission report in part, because we are finding that policy direction changes made by CMS are not consistent with those recommendations.

Workforce issues are also a significant issue. Mr. Moseley stated this was an issue before reform that is now worse because of the need for competent individuals who have the expertise to provide the new services. He stated that there has been a lot of time spent throughout the system in finger pointing. He plans to spend his time from this point forward on seeking ways that all parties can work together to move the system forward.

Pender McElroy asked where we were in the process of getting around the table and figuring out what we are going to do to move forward. Mr. Moseley stated one of the critical factors is building a new strategic plan. The legislature mandated that a consultant be hired to assist in developing a new three year strategic plan that is to be in place by July 1, 2007. Staff has reviewed previous state plans and communication bulletins to identify areas that have not been addressed as well new areas that have surfaced. A discussion was held with the State Consumer Family Advisory Council (CFAC) and the local management entity (LME) directors. The Division is beginning to get input from the field. The consultant will take that information and work with the Division on that process. The strategic plan will be important because it will lay out a plan for the upcoming three years and will include performance measures that will allow for a determination to be made on whether desired outcomes are being achieved.

Mr. McElroy asked how much money is needed. Mr. Moseley responded he cannot answer the question. It is a question that has been asked by the legislature. He stated he is bound by the Governor's budget. He stated he thinks new money will be requested but cannot give a specific dollar amount until the Governor's budget is made public. The LOC may propose something different than what is in the Governor's budget.

Buren Harrelson asked Mr. Moseley if he had any thoughts on the likelihood of the Division's requested allocation being included in the Governor's budget. Mr. Moseley said he could not answer specifically. The revenue picture is still being looked for the overall state budget. Mr. Moseley stated that mental health and Medicaid are considered the top priorities for DHHS and from that standpoint he is confident that there should be new money included in the budget; however, he cannot project a specific dollar amount.

Mr. Moseley updated the Rules Committee on the status of crisis planning. The 15 crisis regions have been identified. The consultant is on board, the Technical Assistance Collaborative and is working with the Division and LMEs on building these crisis plans. The plans are required to be submitted by March 1, 2007. Once the plans are approved, the \$5.2 million allocated as start up funds can be released. One of the proposals the LOC is considering would add funding for crisis services.

Mr. Moseley shared information concerning the screening, triage and referral function of LMEs. The initial review of the proposed rules is being presented today. There may be some legislative clarification concerning this function in the upcoming session. DHHS issued policy guidance that allows a consumer who presents for service to be screened by a provider agency and to receive services from the provider if determined to be appropriate and if the agency is the consumer's provider of choice. The purpose of allowing a provider agency to perform the screening, triage and referral function is in line with the uniform portal concept of no wrong door of entry into service. DHHS does not want a single portal of entry system that requires everyone to go to the LME first in order to receive services. The LOC has indicated the policy is not in line with the intent of the legislation. The LOC specifically indicated that the screening, triage and referral function is to be an LME function and to allow a provider to perform it compromises the role of the LME.

The LOC asked the Secretary of DHHS to reconsider the policy and to suspend it until reconsideration occurs. The Secretary appeared before the State CFAC to get their thoughts on the direction the policy needs to take. The State CFAC unanimously endorsed the policy as issued by the Secretary. Based on that input, the Secretary has chosen to move forward.

Mr. Moseley updated the Committee on the status of the Civil Rights for Institutionalized Persons Act (CRIPA) reviews of the state psychiatric hospitals conducted by the Department of Justice. Over the past couple of years there has been an agreement reached between DHHS and the Department of Justice on an approach that would be used in North Carolina to address improvement issues. This is not a settlement agreement. There is no court order or litigation. DHHS agreed to hire a consultant who is approved by the Department of Justice. The consultant is performing two functions, monitoring the state's improvement plan on behalf of the Department of Justice and consulting with DHHS on making necessary improvements. DHHS is anticipating a newspaper article reporting on this process. DHHS is confident that it will demonstrate substantial improvement within the timeframe required.

Anna Scheyett asked for an outline of the domains that the Department of Justice is monitoring. Mr. Moseley stated these domains are not new and tend to be the issues that surface in most types of review processes. He noted the following areas: treatment planning, use of an interdisciplinary approach and discharge planning. Ms. Wainwright also noted there are some physical plant issues that in part are reflective of the age of the state institutions.

Ellen Russell asked Mr. Moseley to address the statement included in the Long Range Plan report saying that persons with developmental disabilities are adequately funded and adequately served

when there are many people on waiting lists. Also, with the recent issue of parents as providers, the developmental disabilities community has heard from more individuals stating there is not a sufficient workforce to meet people's needs.

Mr. Moseley responded with a general statement that the Division is not in agreement with everything in the report and that certain aspects require further review. He also reiterated that the conclusions reached in the report were based on certain assumptions and the methodology used. For example, the idea of adequate funding included all funding, not just current community funding. An assumption was made that if funding was shifted around there should be sufficient resources available.

Leza Wainwright also responded that the Long Range Plan report was not intended to be a qualitative report. It did not look at the issue of an adequately trained workforce. The report looked at the quantity of services delivered.

In response to a comment concerning bringing other individuals in to give input about issues, Mike Moseley stated that the Division is not working in isolation. Key stakeholders are being consulted when major policy initiatives are being considered.

Pender McElroy again requested that the table included in the mail out packet titled "Rules to be Developed in Fiscal Year 2007" be updated to denote the rules that are under the Secretary's rulemaking authority and those that are under the Commission's rulemaking authority.

#### **10A NCAC 26C .0600 Proposed Adoption of Removal of LME Functions:**

Dick Oliver, Team Leader of the LME Systems Performance Team, DMH/DD/SAS presented the proposed adoption of the Removal of LME Functions rules. The proposed rules are necessary to clearly identify the circumstances and process by which the Secretary of DHHS shall remove a function from a local management entity. Session Law 2006-142 (HB 2077) requires the Commission for MH/DD/SAS to adopt rules regarding the notice and procedural requirements for removal of one or more LME functions.

Anna Scheyett asked Mr. Oliver to clarify the critical performance indicators which would be used to determine whether an LME function should be removed. Mr. Oliver responded that these would be specified in the contract between the Division and LME, and that these had not yet been established.

Yvonne Copeland presented the NC Council of Community Programs' comments and recommended changes to the proposed rules, which focused on issues including timeframes for LME meeting performance indicators and for Division technical assistance prior to removal of functions. See the attached document. The Rules Committee accepted the suggested change in language to delete Director and add Secretary in Rules .0603 - .0605 as proposed by the Council.

***Upon motion, second and unanimous vote, the Rules Committee approved the proposed adoption of 10A NCAC 26C .0600 with the accepted changes to be forwarded to the full Commission for initial review for publication.***

Joe Donovan expressed a concern about whether or not consumers and families would be notified when the Division initiates focused technical assistance and monitoring. Pender McElroy asked

if there was a mechanism that would allow the local CFAC to be notified. Flo Stein and Steve Hairston responded that this could be done.

Following the break for lunch, Pender McElroy asked to make an announcement. He stated that he and Flo Stein had a conversation during the break concerning how the NC Council of Community Programs can have input into the rulemaking process prior to the time the proposed rules come to the Rules Committee. He reported that Ms. Stein was receptive to the idea and that she would be working with Yvonne Copeland and other NC Council staff to make sure that this kind of input is received early in the process.

#### **10A NCAC 28I .0401 Proposed Repeal of Firearms – State Facilities:**

Laura White from State Operated Services, DMH/DD/SAS presented the proposed repeal of the Firearms - State Facilities rule. The proposed repeal is necessary to update the requirements concerning firearms and State facilities. The current rule was adopted in 1976 under the rulemaking authority of the Commission for MH/DD/SAS. S.L. 1985-589 repealed previous mental health statutes codified in G.S. 122 and created a new Chapter, G.S. 122C. G.S. 122C-112.1(a) (10) states the Secretary shall operate State facilities and adopt rules pertaining to their operation. Therefore, it is necessary that the Commission for MH/DD/SAS repeal the current rule and that the Secretary adopt a new rule concerning firearms and State facilities. There were no comments received during the comment period.

*Upon motion, second and unanimous vote, the Rules Committee approved the proposed repeal of 10A NCAC 28I .0401 to be forwarded to the full Commission for final action.*

#### **10A NCAC 28I .0402 Proposed Adoption of Firearms – State Facilities:**

Laura White also presented the proposed adoption of the new Firearms – State Facilities rule. The proposed adoption is necessary to update the requirements concerning firearms and State facilities. The Secretary has rulemaking authority for the subject matter of the proposed amendment. There were no comments received during the comment period. The proposed adoption was presented to the Rules Committee for information and comment.

#### **10A NCAC 27G .1500 Proposed Repeal of Intensive Residential Treatment:**

Susan Robinson of the Prevention and Early Intervention Team, DMH/DD/SAS presented the proposed repeal of the Intensive Residential Treatment rules. The proposed repeals are necessary since new rules have been adopted for facilities previously licensed in accordance with 10A NCAC 27G .1500. The Commission for MH/DD/SAS adopted new licensure rules for providers of residential treatment and psychiatric residential treatment services (PRTF). New rules became effective on 11/01/2005 for facilities providing PRTF services and on 04/01/2006 for facilities providing intensive residential treatment (Level IV) services. The new rules for PRTF are codified in 10A NCAC 27G. 1900. Intensive residential treatment rules are contained in 10A NCAC 27G .1800.

Both services were licensed in accordance with 10A NCAC 27G .1500 prior to the effective date of the new rules. Repeal of this section of rules is necessary as the language is no longer reflective of the licensure requirements for facilities providing these services. There were no comments received during the comment period.

*Upon motion, second and unanimous vote, the Rules Committee approved the proposed repeal of 10A NCAC 27G .1500 to be forwarded to the full Commission for final action.*

**10A NCAC 27G .0212 Proposed Adoption of Disclosure of Financial Interest:**

Jim Jarrard, Team Leader of the Accountability Team, DMH/DD/SAS presented the proposed adoption of the Disclosure of Financial Interest rule. Revised statutory language in G.S. 122C-26(5)e requires the Commission to adopt rules applicable to facilities licensed under Article 2 of this Chapter, to require facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety. This proposed rule addresses this requirement.

The Committee reviewed the recommendations and alternative language submitted by the NC Council of Community Programs. See the attached document. After discussion, the Committee accepted changes in language in Paragraph (b) line nine, to insert after the word “employee” [comma a potential employee of the provider who is in the hiring process] and to insert after the word “an” [owner comma principal or an].

*Upon motion, second and unanimous vote, the Rules Committee approved the proposed adoption of 10A NCAC 27G .0212 with the accepted changes to be forwarded to the full Commission for initial review for publication.*

**10A NCAC 27I .0102 and .0201 Proposed Adoption of LME Accreditation and 10A NCAC 27G .0211 Proposed Adoption of Provider Accreditation:**

Jim Jarrard presented the proposed adoptions of the LME Accreditation rules. The proposed rule satisfies requirements established in Session Law 2006-142 to assure that all previous directives and communications established by DHHS on MH reform requirements have supporting rules. Communication Bulletin #50 requires an LME’s system management functions to be accredited. The proposed rules support that requirement.

Mr. Jarrard also presented the proposed adoption of the Provider Accreditation rule. There is a requirement that service providers of services identified in DMA Clinical Policy 8A and subsequent amendments to that policy be nationally accredited within three (3) years of enrollment as a service provider. The proposed rule supports that requirement.

See the attached document for a description of the NC Council on Community Programs’ recommendations concerning the proposed rules.

The Secretary has rulemaking authority for the subject matter of the proposed amendment. The proposed changes were presented to the Rules Committee for information and comment.

**10A NCAC 27G .0700 Proposed Repeal of Accreditation of Area Programs and Services:**

Jim Jarrard presented the proposed repeal of the Accreditation of Area Programs and Services rules. These rules no longer apply to the MH/DD/SA service system. Most LMEs have divested themselves of service provision, and are managers of local MH/DD/SA service system issues. Also, the use of the term “accreditation” in this context is confusing, since accreditation in current



MH/DD/SA reform is a status conferred on a LME or a MH/DD/SA service provider by a national accreditation agency, whereas the term used in these rules primarily applied to assuring compliance with rules and regulations.

The Secretary has rulemaking authority for the subject matter of the proposed amendment. The proposed changes were presented to the Rules Committee for information and comment.

#### **10A NCAC 27I .0300 Proposed Adoption of Uniform Portal:**

Spencer Clark, Assistant Chief of the Community Policy Management Section, DMH/DD/SAS presented the proposed adoption of the uniform portal rules. G.S. 112.1(14) directs the Secretary to adopt rules for the implementation of the uniform portal process. The proposed rules address that requirement.

See the attached document for a description of the NC Council on Community Programs' recommendations concerning the proposed rules.

The Secretary has rulemaking authority for the subject matter of the proposed amendment. The proposed changes were presented to the Rules Committee for information and comment.

#### **10A NCAC 26C .0700 Proposed Adoption of Requirements for Endorsement of Providers of MH/DD/SA Services:**

Mabel McGlothlen from the LME Systems Performance Team, DMH/DD/SAS presented the proposed adoption of the Requirements for Endorsement of Providers of MH/DD/SA Services rules. The proposed rules satisfy requirements established in Session Law 2006-142 142 to assure that all previous directives and communications established by DHHS on MH reform requirements have supporting rules. Communication Bulletin # 44 requires providers of certain MH/DD/SAS services to be endorsed by an LME. These proposed rules support that requirement.

See the attached document for a description of the NC Council on Community Programs' recommendations concerning the proposed rules.

The Secretary has rulemaking authority for the subject matter of the proposed amendment. The proposed changes were presented to the Rules Committee for information and comment.

#### **Other Business:**

Pender McElroy asked that the minutes reflect the Rules Committee's appreciation to staff in the presentation of these rules in particular, the presentation of the Secretary's rules, in listening to the Committee's comments and providing feedback.

Ellen Russell announced that due to the new ethics legislation she would have to register as a lobbyist and would have to resign from the Commission. The Chair expressed his appreciation for Ms. Russell's work on behalf of the entire Commission.

**There being no further business the meeting adjourned at 3:05 pm.**